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MARKET SURVEILLANCE IN PRACTICE SEEN FROM A CONSUMER PERSPECTIVE

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As Secretary-General of ANEC, the European consumer voice in standardisation, it is my daily business to ensure that consumer interests are taken into account in the elaboration of European standards complementing European product safety legislation.

Many of ANEC members, national consumer organisations, are more or less directly involved in market surveillance. They monitor the market place by product testing, detect deficiencies, they collect consumer complaints and last but not least they inform and advise the consumer about it. As customers, consumers are directly affected by market surveillance, and in the worst case the victims of its failure.

Therefore, I very much appreciate having the opportunity today to speak to you. ANEC welcomes this conference because we believe that there is a need to strengthen market surveillance in the ENLARGED Internal Market.

We welcome the stronger focus on market surveillance, information exchange and the new information obligations for producers introduced by the revised GPSD. This said, we would appreciate if the concept of safety

as enshrined in the GPSD¹ would be transposed into other safety legislation, in particular the Low Voltage Directive currently under revision.

During the next couple of minutes, I will share with you some of the experiences European consumer organisations have regarding market surveillance, illustrated by examples. I am afraid I cannot avoid touching upon the CE marking. As a conclusion I will present our wish list for improved market surveillance.

Experiences of consumer organisations

Bearing in mind that product safety is a basic consumer right, European consumer organisations do believe that the revised GPSD in combination with the New Approach Directives and harmonised standards create adequate legal and technical requirements for product safety in the European Union. Certainly, over the past ten, twenty years product safety in the European Union has improved considerably.

However, the best legislation, the best standard is of no use if not properly enforced. We know by experience that not all producers or distributors are taking their responsibility seriously to place only safe products on the market.

¹ "Safe product" shall mean any product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular:

- (i) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, for installation and maintenance;
- (ii) the effect on other products, where it is reasonably foreseeable that it will be used with other products;
- (iii) the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product;
- (iv) the categories of consumers at risk when using the product, in particular children and the elderly.

We also know by experience about poor instructions for use, the misuse of marks and labelling or that some certificates may not include the necessary documentation. We know that quality control systems of production lines can fail and result in dissimilarities and unsafe products in some countries. And experience shows that if market control is not functioning across borders, unsafe products will be dumped and pop up in other countries, with preference in the New Member States.

The consequences: For instance in Germany, each year 70.000 accidents are registered due to faulty products. And in the UK, tests by Consumers' Association – nowadays which – over many years show that about 7% of the products that they test have serious safety problems. In the Netherlands, enforcement officers even talk about 15 %, 20 % of unsafe products. The situation might even be bleaker in the new Member States.

At the end of the day, it is the consumer being left to carry the can, and regrettably in many cases the most vulnerable consumer: Children! Most of the approximately 150 notifications exchanged over the RAPEX system in the course of 2003 related to toys, followed by other types of products for children. Main risks were choking and suffocation, fire, and electric shocks.

Take for instance this children's desk lamp shaped as a teddy bear and made of green rigid foam. It carries the risk of an electric shock due to unsafe features such as the switch, wire fixation, and accessible live components. The product does not comply neither with the Low Voltage Directive nor the relevant European Standards².

Or these rattles: There is a risk of suffocation and injury because of insufficient resistance of the rattles. In case of breaking they release small

sharp items that a child can try to swallow. The product does not comply neither with the Toys Directive nor the relevant European standards.³

Bearing in mind these examples, it is indeed our experience that producers and distributors need to be constantly challenged by public authorities but also consumer organisations to maintain and improve the levels of safety that consumers reasonably expect. Consumers are customers. Consumer confidence is crucial for economic growth in the Internal Market and the 'Jobs and Growth' strategy of the Commission, the famous Lisbon strategy.

Faulty and unsafe products, however, trigger a loss of consumer confidence in product safety and the European internal market. This is even reinforced when unsafe products bear the **CE marking**.

In fact, ANEC is concerned about the misleading impact the CE marking has on the consumer. From a consumer perspective, the CE marking has no added value - on the contrary it is rather misleading and often perceived as a safety or quality mark or a mark of origin. In fact, as you know, the CE is a self-declaration by the manufacturer and it is addressed to authorities and not to consumers. Why then affix on the product?

As much as consumer organisations are concerned about the side effects of the CE marking as much we are convinced that there is a need for a genuine single European quality mark, based on third party certification, putting an end to the mushrooming of marks.

My last example for our experiences refers to the gap or discrepancy between product safety legislation and standards on the one hand and

² It was voluntarily withdrawn from the market by the distributor and was notified by France in 2004.

³ Hungarian authorities launched a recall from consumers in 2005.

market surveillance on the other hand. It is also linked to the effects of globalisation and the challenges it brings for European market surveillance. As you know, more and more consumer products are imported. So are many lighters, which are covered by the GPSD.

For a long time, consumer organisations lobbied for a European standard on child resistant lighters because of the risk that young children accidentally start a fire. At the time, EU Member States and EFTA countries endorsed our plea because they wanted a standard or a benchmark tool for their enforcement agencies against the requirements of the GPSD. So some of you might be familiar with this case.

After long and very difficult discussions with industry, in 2002, EN 13869, Lighters – Child-resistance for lighters – Safety requirements and test methods was adopted, along the lines of the US model. The standard was meant being used in conjunction with the international standard⁴, which covers in the main mechanical safety. But the publication of the EN in the Official Journal is pending to date.

We understand that there was strong lobbying from the Chinese industry against the publication of the standard. In fact, China sent a delegation of 13 people on a 'tour de Europe' to lobby national authorities, consumer organisations and national standards bodies. We also heard on the grapevine the argument that some Member States feared not to be in the position to ensure sufficient market surveillance and therefore prefer not to publish the standard.

⁴ (EN ISO 9994, Lighters – Safety specification, which covers, in the main, mechanical safety in terms of robustness. The additional requirements of EN 13869 are intended to make the lighter resistant to operation by children younger than 51 months, through a regime of ergonomic tests.)

Consumer wish list

To our mind, the lighters case illustrates once again that enforcement of safety legislation and technical requirements will only be successful provided consumer protection becomes the guiding principle in market surveillance and is non-negotiable!

We also believe that the knowledge of public authorities should become part of the public domain.

We consider consistency as key for efficient enforcement, the same rules and procedures should be applied across the European Union in the same way. We do not want to have double standards in the EU 15 and the new Member States.

Effective and efficient market surveillance has not only to detect but also sanction and correct violation of product safety law.

Basically, we think that a genuine European market control strategy is required. In addition to the rapid exchange of information, we need coordination and collaboration at a large scale in terms of inspections and risk assessments. We do not want unsafe products cycling from one country to another because different authorities evaluate the risks of a product differently. It is important that authorities have a common base for evaluating the safety of consumer products, for which European standards are a useful tool.

Last but not least and more importantly, improved market surveillance will remain a vision unless there is genuine and visible increase in resources in terms of money and people working in market surveillance in the Member States. I hope that these thoughts will inspire your discussions during the next two days. Thank you very much for your attention!